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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DEC 06 2010

Edward Lee Smith,)	CLERK, U.S. DISTRICT CC JRT
PLAINTIFF,)	ST PAUL, MN
v.)	Civil No. <u>10cv4930 PJS/4B</u>
UNITED STATES DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR THE UNITED STATES ATTORNEYS; ERIC HOLDER, U.S. ATTORNEY GENERAL,)	<u>COMPLAINT FOR INJUNCTIVE RELIEF</u>
DEFENDANTS.)	
)	

NATURE OF ACTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, and the Administration Procedure Act, 5 U.S.C. § 701 et seq., for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by PLAINTIFF from DEFENDANT Executive Office for the U.S. Attorney.

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (6)(E)(iii).

3. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 701 et seq.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

5. PLAINTIFF is a Federal Inmate at the Federal Prison Camp, Edward Lee Smith, Reg. No. 08506-041, Federal Prison Camp, P.O. Box 1000, Duluth, Minnesota 55814-1000, PLAINTIFF, pro se. SCANNED

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U.S. DISTRICT COURT ST. PAUL

- a. PLAINTIFF has filed a 28 U.S.C. § 2255 Habeas Motion in the United States District Court, District of Minnesota, Case No. 10-cv-02596-RHK.
 - b. PLAINTIFF requires the documents requested from the DEFENDANTS for his Habeas Motion.
6. DEFENDANT Department of Justice is a Department of the Executive Branch of the United States Government. The DOJ is an agency within the meaning of 5 U.S.C. § 552(f).
7. DEFENDANT Executive Office of the United States Attorney is a component of the Department of Justice. The EOUSA is an agency within the meaning of 5 U.S.C. § 552(f).
8. DEFENDANT Eric Holder is Attorney General of the United States and heads the Department of Justice. This DEFENDANT is responsible for both DOJ and EOUSA and their compliance with the laws of the United States and regulations promulgated under such laws, including the laws and regulations at issue in this case.
9. Department of Justice address is Tenth Street and Constitution Avenue, N.W., Washington, DC 20530.

THE UNITED STATES ATTORNEY'S ALLEGATIONS

10. At PLAINTIFF' Smith's Criminal Trial, Case No. 08-cr-128-RHK-JJG, the United States Attorney alleged that evidence of illegal drug trafficking had been seized in trash taken from outside his home and which provided evidence to support issuance of a warrant to search his home on March 25, 2008. The United States Attorney's Office failed to provide the documents pertaining to the trash pull during the trial proceedings.

PLAINTIFF'S FOIA REQUESTS

11. By means of nine (9) letters to DEFENDANT EOUSA dated from January 2-21, 2010, PLAINTIFF requested documents pertaining to the trash pull but, received no response. See Exhibits 1-9 (Plaintiff's FOIA Requests).

12. By means of letters sent to the office of Information and Privacy, U.S. Department of Justice, PLAINTIFF appealed the denial (non-response) of each of his nine (9) FOIA requests and, again, was met with no response. The appeal letters are attached to Exhibits 1-9.

13. The determination of the existence or non-existence of the documents requested is vital to PLAINTIFF'S claim in his § 2255 Habeas Motion, namely, that the affidavit used to support the application for the warrant to search his home contained materially false information without which the warrant would not have issued, the evidence seized would have been suppressed, and his conviction would be vacated.

DEFENDANT'S FAILURE TO RESPOND AND
PLAINTIFF'S ENTITLEMENT TO EXPEDITED PROCESSING

14. Until this date, DEFENDANTS have not responded to PLAINTIFF'S FOIA requests or appeals.

15. PLAINTIFF has exhausted the applicable administrative remedies.

16. PLAINTIFF is entitled to expedited processing of its FOIA request under 28 U.S.C. § 1657(a).

17. DEFENDANTS have wrongfully withheld the requested records from PLAINTIFF.

CLAIMS FOR RELIEF

First Claim: Violation of FOIA - Failure to respond to FOIA request.

18. PLAINTIFF repeats and realleges paragraphs 1-16.

19. DEFENDANTS' failure to timely respond to PLAINTIFF'S request violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

Second Claim: Violation of FOIA - Failure to respond to FOIA Appeal.

20. PLAINTIFF repeats and realleges paragraphs 1-16.

21. DEFENDANTS' failure to timely respond to PLAINTIFF'S appeals violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

Third Claim: Violation of APA - Failure to respond to FOIA Requests and Appeals.

22. PLAINTIFF repeats and realleges paragraphs 1-16.

23. DEFENDANTS' failure to timely respond to PLAINTIFF'S requests and Appeals constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA.

24. DEFENDANTS' failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.

PRAYER

PLAINTIFF requests that this Court:

A. Order DEFENDANTS immediately to process the requested records in their entireties;

- B. Order DEFENDANTS, on completion of the expedited processing, to disclose the requested records in their entireties and send copies available to PLAINTIFF;
- C. Provide for expeditious proceedings in this action;
- D. Award PLAINTIFF his costs and reasonable attorney's fees incurred in this action; and
- E. Grant PLAINTIFF all other relief that is just and proper.

DATED: December 2, 2010.

Respectfully submitted,

/s/ Edward Smith
Edward Lee Smith, pro se
Reg. No. 08506-041
Federal Prison Camp
P.O. Box 1000
Duluth, MN 55814-1000

CERTIFICATE OF SERVICE

I CERTIFY THAT I MAILED ONE (1) ORIGINAL AND ONE (1) COPY TO THE UNITED STATES DISTRICT COURT CLERK FOR THE DISTRICT OF MINNESOTA, THOMAS HOLLENHORST UNITED STATES COURTHOUSE, 300 S. 4TH STREET, MINNEAPOLIS, MINNESOTA 55415, AND ONE (1) COPY TO THE DEFENDANT ERIC HOLDER, ATTORNEY GENERAL OF THE UNITED STATES DEPARTMENT OF JUSTICE ADDRESS, TENTH STREET AND CONSTITUTION AVENUE, N.W., WASHINGTON, DC 20530. VIA PRISON LEGAL MAIL.

DATED: December 2, 2010.

Respectfully submitted,

/s/ Edward Smith
Edward Lee Smith, pro se
Reg. No. 08506-041
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Duluth, MN 55814-1000